

To:
Ms. Anoush Begoyan
PCM Officer
Project Complaint Mechanism
European Bank for Reconstruction and Development
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From:
Priatel'ia Zeme-CEPA, Slovak Republic
SOS BirdLife Slovensko, Slovak Republic

Subject: Complaint on D1 motorway Phase I, Slovak Republic seeking project compliance review

07th June 2010

Dear Ms. Begoyan,

we are writing to complain about the D1 motorway Phase I project in the Slovak Republic, approved by the EBRD Board of Directors for financing on 27 April 2010, currently pending signing.¹ We are particularly concerned about the inadequate appraisal of environmental risks connected with the Turany - Hubova section of the motorway, damage so far and further potential impacts on the Natura 2000 sites and habitats of Community importance. We are convinced that the underestimation of environmental risks has led to insufficient mitigation measures resulting in recent damage to the Rojkovske Raselinisko Mire Nature Reserve by preparatory construction works. Taking into account that the construction of the highly complex Rojkov highway tunnel on the route of the D1 motorway is to take place in the close vicinity of the reserve, we fear that any similar misinterpretation of environmental risks and inadequate project management would translate into further irreversible impacts on the mire.

We are of the opinion that the project has breached the EC Habitat Directive and the EBRD's Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources established by the EBRD Environmental and Social Policy. Our specific concerns of policy breaches are described in the text below.

In the light of our findings, we ask the Project Complaint Mechanism to undertake a compliance review of the project. We hope that the review will help to prevent further environmental damage to the Rojkov mire as well as potential adverse impacts on the other fragile ecosystems along the motorway route.

Description of the harm done

On April 24, 2010 construction workers dug a trench for relocating a cable along the north-western boundary of the Rojkovské Rašelinisko Mire Nature Reserve. The trench led from the turn-off of the service road of the prepared western portal of the Rojkov highway tunnel parallel with the main road at a distance of a few metres outside the boundary of the Reserve. About 40 % of shrubs, predominantly of habitat of national importance Kr8 Mire willow scrub were cut. Although the trench itself was outside of the Reserve, for the next seven days, water drained out of the reserve through the trench, resulting in a drop of groundwater levels in the northwest alluvial part of the mire that severely interferes in habitats of protected and endangered plants and animals.

After media had reported on the incident and state inspectorate had examined the matter, the unfinished

¹ <http://www.ebrd.com/projects/psd/psd2009/39007.htm>

trench was filled up with soil without relocating the cable. This raises doubts about whether the works happened in accordance with the construction permit and whether the works were critical to the project. Civil society organisations have not been able to confirm this due to the public unavailability of the construction permit.

For details on the harm incurred to the reserve and for the related photo documentation, see the enclosed preliminary expert report “Most significant impacts of the proposed motorway D1 Turany - Hubová on the Rojkovské Rašelinisko Mire”, prepared by the Slovak biologist Jan Topercer.

We would like to acknowledge that on being informed of this development the EBRD did act promptly in sending a consultant to check the situation. Information provided orally at the EBRD annual meeting suggests that the consultant did not find evidence of long-term damage to the reserve. We are concerned that a single visit to the site, particularly if it took place after the trench was filled in, may not have been sufficient to identify potential long-term damage.

The relevant parts of the EBRD Environmental and Social Policy at issue in the Complaint

Inappropriate assessment of the project’s impacts on protected areas of NATURA 2000

The environmental impact assessment of several variants of the D1 Turany – Hubová section (as part of the longer section Martin – Lúbochňa) was performed between 1995 and 2002 according to Act No. 127/1994 on Environmental Impact Assessment. On 12 November 2002, the Ministry of Environment SR (MoE SR) issued a Final Environmental Impact Statement No. 1832/02-4.3 on the construction of the D1 Martin - Lúbochňa Motorway (including the Turany - Hubová section). On 27 June 2006 Národná diaľničná spoločnosť a.s., Bratislava (the National Motorway Company, joint stock company, based in Bratislava) asked the MoE SR for prolongation of the final statement. The MoE SR prolonged the validity of the final statement by decision No. 8344/06 - 7.3./ml of 8 August 2006 until 1 February 2008.

At the time of the prolongation of the validity of the final statement the Slovak republic had already become an EU member state and in accordance with the Treaty of Accession sites were identified on its territory that the Slovak Republic proposed to include into the Natura 2000 Networking Programme in conformity with the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

Since some of the sites that the Slovak Republic proposed to include in the NATURA 2000 Networking Programme are located on the route of the D1 motorway, an additional study assessing motorway impacts on the Natura 2000 sites² was prepared by the company Creative, s.r.o. in November 2007 (hereafter “the study of PEŤKOVÁ & MIKA 2007³”) and submitted to Ministry of Environment of the Slovak Republic. The analysis concluded that if the proposed mitigation measures are implemented, the Turany - Hubová variant of the D1 motorway would have no significant impact on Natura 2000 sites.

In November 2009, the study of PEŤKOVÁ & MIKA 2007 was reviewed by a team of nature protection experts who described their findings in the report “The importance of impacts of the proposed motorway D1 Turany - Hubová on species, habitats, Natura 2000 sites and landscape - Specialist opinion”³. The report argues that the study of PEŤKOVÁ & MIKA 2007 is not based on complete, methodically and clearly specified sources of information and thus, it should not be considered as an appropriate assessment under Article 6(3) of the Habitat Directive 92/43/EEC.

Contrary to the the study of PEŤKOVÁ & MIKA 2007, the review indicates that the chosen variant of the motorway D1 section Turany - Hubová would have significant negative impacts on Natura 2000 sites, posing the risk of serious damage and/or destruction of ecological characteristics and integrity of the habitats,

² The assessment of the significance of any impact of the proposed D1 Turany - Hubová on the Natura 2000 sites (Hodnotenie významnosti vplyvov navrhovanej diaľnice D1 Turany - Hubová na územia sústavy NATURA 2000), Creative, s.r.o., November 2007

³ The importance of impacts of the proposed motorway D1 Turany - Hubová on species, habitats, Natura 2000 sites and landscape. Specialist opinion. November 2009. http://bankwatch.org/documents/D1_TuranyHubovaSection_specialist_opinion.pdf

ecosystems and landscape, especially in the area of Šútovo - Rojkov (Natura 2000 Sites Malá Fatra, Veľká Fatra and Váh River). Further, the experts claim that along with the insufficient assessment the PEŤKOVÁ & MIKA 2007 study seriously neglects mitigation measures.

The recent draining of the Rojkovske mire stands as unfortunate real-life evidence of the risk assessment and management deficiencies described in the expert study. In light of the expert report findings and the physical damage to the Rojkov mire, we believe that the EBRD failed to ensure that the client fully identifies and characterizes biodiversity impacts related to the project. We regard this as a violation of the Paragraph 6 of the EBRD Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources which claims that:

“Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders.”⁴

The expert report identifies the project site as a complex that “shows representativeness for mountain, forest, rock, wetland and water biota of the Western Carpathians and is endowed with high landscape heterogeneity, an extraordinary diversity of habitats (at least 26 types of Community and national importance) and plant and animal species (tens of rare, endangered, endemic or otherwise important species, some of them surviving only in minimum viable populations), concentrated connectivity and important refugial functions.” It concludes that “the losses of these specific natural features could be neither compensated nor mitigated (or only to a very limited extent) and some of them may have a substantial impact on Slovak as well as European natural heritage”.

In our view, such site characterization is analogical to the EBRD definition of critical habitats as put forward by the Paragraph 13 of the Performance Standard 6 of the EBRD Environmental and Social Policy:

“Irrespective of whether it is natural or modified, some habitat may be considered to be critical by virtue of (i) its high biodiversity value, (ii) its importance to the survival of endangered or critically endangered species, (iii) its importance to endemic or geographically restricted species and sub-species, (iv) its importance to migratory or congregatory species, (v) its role in supporting assemblages of species associated with key evolutionary processes, (vi) its role in supporting biodiversity of significant social, economical or cultural importance to local communities, or (vii) its importance to species that are vital to the ecosystem as a whole (keystone species).”

We assume that any project activities impacting on the critical habitats (Natura 2000 sites) should be dealt with it according to the Paragraph 14 of the Performance Standard 6:

“Critical habitat must not be converted or degraded. Consequently, in areas of critical habitat, the client will not implement any project activities unless the following conditions are met:

- Compliance with any due process required under international obligations or domestic law that is a prerequisite to a country granting approval for project activities in or adjacent to a critical habitat has been complied with.

- There are no measurable adverse impacts, or likelihood of such, on the critical habitat which could impair its ability to function in the way(s) outlined in paragraph 13.

- Taking a precautionary perspective, the project is not anticipated to lead to a reduction in the population of any endangered or critically endangered species or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised.

- Notwithstanding the above, all other impacts are mitigated in accordance with the mitigation hierarchy.”

However, the digging of the trench by the Rojkov mire has demonstrated that the client has undertaken activities likely to result in adverse impacts that have impaired the functioning of the critical habitat. We regard this as breaching Paragraph 14 of the Performance Standard 6 of the EBRD Environmental and Social Policy.

⁴ EBRD's 2008 Environmental and Social Policy. Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources. Paragraph 6.

As mentioned above, due to the public unavailability of the construction permit, civil society organisations have not been able to assure themselves on the legal status of the construction activities concerning the Rojkov mire. If proved to be illegal, the activities would breach the Paragraph 15 of the Performance Standard 6 of the EBRD Environmental and Social Policy which rules that:

“Areas may be designated by government agencies as protected for a variety of purposes, including to meet country obligations under international conventions. Within defined criteria, legislation may permit development in or associated with key evolutionary processes; adjacent to protected areas. In addition to the applicable requirements of paragraph 14, the client will:

- consult protected area sponsors and managers, local communities and other key stakeholders on the proposed project in accordance with PR 10;*
- demonstrate that any proposed development in such areas is legally permitted and that due process leading to such permission has been complied with by the host country, if applicable, and the client; and that the development follows the mitigation hierarchy (avoid, minimise, mitigate, offset) appropriately; and*
- implement additional programmes, as appropriate, to promote and enhance the conservation aims of the protected area.”*

Desired outcomes

Overall, the insufficient environmental assessment of the Turany – Hubová motorway section and the harm done to the Rojkovske mire rings an alarm bell about the approved variant’s further potential affects on the mire and adequacy of the proposed mitigation measures. The same concerns apply more generally to the project’s impacts on the species and habitats of Community and national importance, Natura 2000 sites and the landscape along the route. As the expert report explains the Rojkov motorway tunnel which is to be built on the surface only approximately 80 metres southwest from the border of the Rojkovske reserve could pose existential danger to the mire. This could lead to the escalation of the current affects on the habitat. Taking into consideration the recent and potential impacts, the Bank should oversee preparation of a proper biodiversity impact assessment of the chosen route as well as of alternative solutions and ensure that a comparative analysis is performed. We understand that this decision is outside of the scope of the Project Complaint Mechanism.

With this complaint, we request the EBRD Project Complaint Mechanism experts to perform a Compliance Review into the D1 motorway Phase I project.

Best regards,



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Overview of the communication with EBRD and other Relevant Parties:

1. Most significant impacts of the proposed motorway D1 Turany Hubová on the Rojkovské Rašelinisko Mire. Preliminary report. By Jan Topercer. May 2010
http://bankwatch.org/documents/report_D1impacts_May2010.pdfD1 motorway Phase I, Slovakia - EBRD AGM Issue Paper. May 10, 2010.
http://bankwatch.org/documents/IP_EBRD_D1motorway_10May2010.pdf
2. Letter to the EBRD President Thomas Mirow from April 29, 2010.
http://bankwatch.org/documents/letter_EBRD_D1loanapproval_29April2010.pdf
3. Letter to the Corporate Director for Environment and Sustainability Alistair Clark regarding specialist opinion on the impacts of the D1 motorway section Turany-Hubova from February 16, 2010.
http://bankwatch.org/documents/Letter_EBRD_SpecialistOpinion_Feb10.pdf
4. Letter to European Commission regarding impacts of the D1 motorway Turany-Hubova. March 23, 2010.
http://bankwatch.org/documents/Letter_EC_D1motorway_March2010.pdf
5. Specialist opinion on the importance of impacts of the proposed motorway D1 Turany-Hubová on species, habitats, Natura 2000 sites and landscape. November 15, 2009.
http://bankwatch.org/documents/D1_TuranyHubovaSection_specialist_opinion.pdf
6. Letter to the EIB regarding impacts of a proposed D1 motorway section. December 21, 2009.
http://bankwatch.org/documents/letter_EIB_D1expertise_21Dec2009.pdf
7. Letter to the European Commission regarding impacts of a proposed D1 motorway section. December 21, 2009.
http://bankwatch.org/documents/letter_EC_D1expertise_21Dec2009.pdf
8. Complaint to EIB regarding breaches of EU legislation in preparations for the D1 motorway. May 4, 2009.
http://bankwatch.org/documents/complaint_EIB_D1_04May2009.pdf
9. D1 Motorway, Slovakia - EBRD AGM Issue Paper. May 2009.
http://bankwatch.org/documents/D1Slovakia_IssuePaper_EBRD_AGM2009.pdf